

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, November 14, 2001 – 2:00 p.m. – Room 403 State Capitol

Members Present:

Sen. David L. Gladwell, Senate Chair
Rep. Glenn L. Way, House Chair
Sen. D. Edgar Allen
Sen. Millie M. Peterson
Sen. Terry R. Spencer
Sen. Michael G. Waddoups
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Ron Bigelow
Rep. Katherine M. Bryson
Rep. Scott Daniels
Rep. James A. Ferrin
Rep. Ben C. Ferry

Rep. Neal B. Hendrickson
Rep. Eric Hutchings
Rep. Mike Thompson
Rep. A. Lamont Tyler

Members Absent:

Rep. Greg J. Curtis
Rep. David Ure

Staff Present:

Mr. Jerry D. Howe, Research Analyst
Ms. Esther D. Chelsea-McCarty, Associate General Counsel
Ms. Glenda S. Whitney, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

1. Call to Order and Committee Business

Chair Way called the meeting to order at 2:25 p.m.

MOTION: Rep. Hendrickson moved to approve the minutes of the October 24, 2001 meeting. The motion passed unanimously with Sen. Waddoups, Rep. Arent, Rep. Bennion, Rep. Bryson, Rep. Daniels, and Rep. Ferrin absent for the vote.

2. Serious Youth Offender Amendments

Sen. Lyle W. Hillyard introduced Mr. Blake Chard, Director, Youth Corrections, who briefed the committee on the draft legislation "Serious Youth Offender Amendments." Mr. Chard explained that the bill modifies the Judicial Code by providing that certain offenses committed by a minor within a secure facility are not subject to district court jurisdiction. He answered questions of the committee regarding the bill.

MOTION: Sen. Peterson moved to pass draft legislation "Serious Youth Offender Amendments," out favorably as a committee bill. The motion passed unanimously with Sen. Waddoups, Rep. Arent, and Rep. Bennion absent for the vote.

3. Serious Youth Offender Sentencing Amendments

Sen. Hillyard explained that this legislation modifies the Judicial Code to clarify when jurisdiction over a minor is retained under the Serious Youth Offender provisions. He explained the reason for drafting the bill and answered questions of the committee.

MOTION: Sen. Peterson moved to pass draft legislation "Serious Youth Offender Sentencing Amendments," out favorably as a committee bill. The motion passed unanimously with Sen. Waddoups, and Rep. Bennion absent for the vote.

Sen. Hillyard suggested combining draft legislation "Serious Youth Offender Amendments" with the draft legislation "Serious Youth Offender Sentencing Amendments," as one Judiciary Interim Committee bill since both bills passed.

4. Legislation Regarding Divorce and Parent-time

- "Office of Recovery Services Amendments" – Sen. Allen introduced the bill and explained that the bill enacts new language to require that an application for child support services inform the applicant that providing false information may lead to prosecution or case closure. He answered question of the committee.

Mr. Brent Holdaway, Focus, expressed concern with line 18 of the draft where the word "crime" was inserted. He suggested referring back to the previous draft and insert the word "perjury" in place of "crime."

MOTION: Sen. Spencer moved to amend line 18, striking the word "crime" and insert the reference to the Class A misdemeanor section. The motion passed with Sen. Gladwell, Sen. Allen, Rep. Arent, Rep. Bryson, Rep. Daniels, Rep. Ferrin, and Rep. Tyler voting in opposition. Sen. Waddoups was absent for the vote.

Mr. Gary Holt, Focus, spoke in support of the bill.

MOTION: Sen. Spencer moved to pass draft legislation "Office of Recovery Services Amendments," as amended, out favorably as a committee bill. The motion passed unanimously with Sen. Peterson, Sen. Waddoups, Rep. Arent, and Rep. Bryson absent for the vote.

- "Release of Custodial or Noncustodial Parent's Address" – Sen. Allen explained that the bill modifies the requirements under which the Office of Recovery Services may release information on custodial or noncustodial parents. He answered questions of the committee.

Ms. Emma Chacon, Office of Recovery Services, said this bill will meet the requirements of federal law. She expressed concern with the issue of liability to the Office of Recovery Services if information is lost. Ms. Chacon spoke in support of the bill.

Mr. Conrad Lloyd, Focus, spoke in support of the bill.

MOTION: Sen. Spencer moved to pass draft legislation "Release of Custodial or Noncustodial Parent's Address," out favorably as a committee bill. The motion passed unanimously with Sen. Peterson, and Rep. Bryson absent for the vote.

- "Divorce and Parent-time Revisions" – Rep. Bennion explained that the bill modifies provisions pertaining to parent-time and child support. It provides for a minimum visitation schedule when a parent relocates, either by leaving the state or by putting more than 150 miles between a noncustodial parent and a child. It also requires that the Office of Recovery Services verify information received concerning nonpayment of support before acting on a possibly unfounded allegation. He answered questions of the committee.

MOTION: Rep. Ferry moved on line 52, after Section (7), to insert language "Unless otherwise ordered by the court,". The motion passed unanimously with Sen. Peterson and Rep. Bryson absent for the vote.

MOTION: Sen. Spencer moved after line 55, to insert a new sentence that reads "The court may retroactively apply this provision to any pre existing decree of divorce." The motion passed with Rep. Daniels voting in opposition. Sen. Peterson, Rep. Arent, and Rep. Bryson were absent for the vote.

Ms. Chacon noted that lines 94-95 may be contrary to federal law. She suggested that she work with Rep. Bennion on new language.

MOTION: Sen. Spencer moved on line 95, after the word "of" to delete "support received from a custodial parent" and insert "a child support payment arrearage". The motion passed unanimously with Sen. Peterson and Rep. Bryson absent for the vote.

Ms. Lori Nelson, Family Law Section, Executive Committee of the Utah State Bar, and Mr. Stewart Ralphs, Legal Aid Society of Salt Lake, expressed concern with draft language and made recommendations to the bill.

MOTION: Sen. Spencer moved on line 42, after section "(i)" and insert "The entire" before the word "Christmas". After the word "break" insert "." and delete "as defined in Subsection 30-3-32(3)(b)". The motion passed with Sen. Allen, Rep. Arent, Rep. Ferry, and Rep. Thompson voting in opposition. Sen. Waddoups and Rep. Tyler were absent for the vote.

MOTION: Sen. Spencer moved on line 45, after the word "parent-time" to insert "equal to one half of the summer or off-track time during" and delete "during the summer for not less than two, and up to four,". The motion passed with Rep. Arent, Rep. Bryson, and Rep. Ferry voting in opposition. Sen. Waddoups and Rep. Tyler were absent for the vote.

MOTION: Sen. Gladwell moved to delete from Sen. Spencer's previous motion on inserting a new sentence after line 55, to delete the word "retroactively" from the sentence.

SUBSTITUTE MOTION: Sen. Spencer moved to delete from his previous motion after line 55, to delete the words "may retroactively" and insert the word "shall". After committee discussion, Sen. Spencer withdrew his substitute motion.

SUBSTITUTE MOTION: Rep. Bryson moved to continue on with the next agenda item. The motion passed with Sen. Spencer, Rep. Bennion, Rep. Bigelow, and Rep. Thompson voting in opposition. Sen. Waddoups and Rep. Tyler were absent for the vote.

- "Parent Time Amendments" – Rep. Ferrin explained that the bill modifies provisions relating to Divorce and Parent-time. It prohibits courts from considering gender when determining custody in a divorce and specifies considerations for the court in determining parent-time. In addition, the bill revises the parent-time sanctions found in the Judicial Code. He suggested an amendment to the bill.

MOTION: Rep. Ferrin moved on line 88, to delete the word "Upon" and insert "If the court found substantial noncompliance in the first petition and" then continue with "a second petition," then insert "is" before the word "filed." Then on line 97, after the word "If" insert "the court found substantial noncompliance in the first and second petition and" then continue with existing language, "a third." The motion passed unanimously with Rep. Bennion, Rep. Bigelow, and Rep. Tyler absent for the vote.

MOTION: Sen. Spencer moved at the end on line 71, after the word "order" insert ", without the need to attend mediation prior to approaching the court." The motion passed with Sen. Peterson, Rep. Arent, Rep. Bryson, and Rep. Daniels voting in opposition.

Mr. Gary Holt and Mr. Thomas Sheffield, public, spoke in favor of the draft legislation and thanked the committee for adopting this legislation.

Ms. Nelson and Mr. Ralphs suggested that visitation mediation should be retained in the courts that are already using the program. They suggested additional amendments to the draft legislation.

MOTION: Rep. Daniels moved at the end of lines 87 and 94, to insert "and if it is in the best interest of the child."

SUBSTITUTE MOTION: Rep. Bigelow moved to pass the draft legislation "Parent Time Amendments," as amended, out favorably as a committee bill. The substitute motion failed with Sen. Gladwell, Sen. Spencer, Sen. Waddoups, Rep. Bigelow, Rep. Way, Rep. Ferrin, and Rep. Thompson voting in favor.

The committee returned to Rep. Daniels original motion.

SUBSTITUTE MOTION: Rep. Ferry moved to continue on to the next agenda item. The substitute motion failed with Sen. Gladwell, Sen. Peterson, Sen. Spencer, Rep. Bigelow, Rep. Daniels, Rep. Ferrin, Rep. Ferry, and Rep. Hutchings voting in favor.

The committee returned to Rep. Daniels original motion.

SUBSTITUTE MOTION: Sen. Spencer moved to adjourn. The substitute motion failed with Sen. Spencer, Sen. Waddoups, Rep. Bigelow, and Rep. Thompson voting in favor. Rep. Bennion was absent for the vote.

The committee returned to Rep. Daniels original motion. The motion before the committee was at the end of lines 87 and 94, to insert "and if it is in the best interest of the child." The motion passed unanimously with Rep. Bennion absent for the vote.

MOTION: Sen. Spencer moved to pass draft legislation "Parent Time Amendments," as amended, out favorably as a committee bill.

SUBSTITUTE MOTION: Rep. Bryson moved on line 19, to restore the language "In determining custody, the court shall consider the best interests of the child." and to delete "and the past conduct and demonstrated moral standards of each of the parties." The substitute motion passed with Rep. Thompson voting in opposition. Rep. Bennion was absent for the vote.

MOTION: Rep. Daniels moved to continue on to the next agenda item.

SUBSTITUTE MOTION: Rep. Tyler moved to pass the draft legislation "Parent Time Amendments," as amended, out favorably as a committee bill. The motion passed with Sen. Peterson, Rep. Way, Rep. Arent, Rep. Bryson, Rep. Daniels, Rep. Ferry, and Rep. Hendrickson voting in opposition. Rep. Bennion was absent for the vote.

5. Reports

Mr. Jerry Howe explained that the statute requires the Pornography Ombudsman to draft a nuisance statute and report it to the Judiciary Interim Committee for review.

- Pornography Ombudsman - "Proposed Changes to Nuisance Law"

Mr. Mark Shurtluff, Utah Attorney General, distributed a working draft of "Proposed Changes to Nuisance Law." He said they are making this presentation in response to statutory mandate with a draft of a comprehensive moral nuisance law for Utah and a model ordinance for municipalities. Also, to establish a program to combat internet pornography and assist parents in protecting their children from internet pornography.

Ms. Paula Houston, Attorney General's Office, explained that she compared the Idaho law, Washington law, and a number of other states that have moral nuisance type law which was the mandate in the code, and compared them to all of the nuisance type code sections Utah currently has on the books and came

up with this draft. She said the committee that worked on the draft consisted of city and county attorneys. She noted that this working draft repeals all of the old Title 78-38 and reenacts this proposed version. She presented an overview of the report and answered questions of the committee.

MOTION: Sen. Allen moved that the committee accept the "Pornography Ombudsman - "Proposed Changes to Nuisance Law" report and move onto the next agenda item. The motion passed unanimously with Sen. Peterson, Rep. Bennion, Rep. Bryson, Rep. Daniels, Rep. Thompson, and Rep. Tyler absent for the vote.

6. Repeal of Judgement Lien Amendments

This agenda item was not discussed.

7. Attempted Murder Amendments

Sen. Gladwell explained that this bill was presented last year before the Judiciary Interim Committee and passed unanimously by both the House and Senate in the 2002 General Session but did not receive funding. The bill modifies the Criminal Code to provide that the offense of attempting to commit certain listed first degree felonies is also a first degree felony, and that the indeterminate term for these attempted first degree felonies is not less than three years, but may be for life.

Mr. Mark Decaria, Weber County Attorney, explained an amendment to the bill and answered questions of the committee.

MOTION: Rep. Arent moved to pass the draft legislation "Attempted Murder Amendments," out favorably as a committee bill. The motion passed unanimously with Sen. Peterson, Sen. Spencer, Rep. Bennion, Rep. Ferrin, Rep. Thompson, and Rep. Tyler absent for the vote.

8. Amendments to Guilty and Mentally Ill

Sen. Gladwell said these amendments are in response to a Supreme Court decision. The bill modifies the Code of Criminal Procedure, creating a new plea of "guilty and mentally ill at the time of the offense" and sets standards for jury instructions on mental defenses.

Mr. Creighton Horton, Attorney General's Office, distributed a handout "Legislative Fact Sheet" that explained the amendments to guilty and mentally ill statutes. He answered questions of the committee.

MOTION: Rep. Bryson moved to pass the draft legislation "Amendments to Guilty and Mentally Ill," out favorably as a committee bill. The motion passed unanimously with Sen. Peterson, Sen. Spencer, Rep. Bennion, Rep. Thompson, and Rep. Tyler absent for the vote.

9. Amendments to Statute of Limitations

Rep. Bryson distributed draft legislation "Statute of Limitations Amendments," for the committee to review. The bill modifies the Criminal Code by specifying additional crimes that are not subject to statutes of limitations for prosecution. The bill also amends the Criminal Code to clarify that the defendant's active concealment of a crime tolls the statute of limitations. Rep. Bryson explained the amendments to the bill.

MOTION: Sen. Waddoups moved to pass the draft legislation "Statute of Limitations Amendments," out favorably as a committee bill. The motion passed unanimously with Sen. Peterson, Sen. Spencer, Rep. Bennion, Rep. Thompson, and Rep. Tyler absent for the vote.

10. Expungement of Juvenile Record

Rep. Daniels said this bill modifies the Juvenile Court Act by clarifying the steps necessary to expunge a record in the Juvenile Court. It requires that the petitioner be over 18 years of age, have completed all court requirements, and that have an adult criminal record. The statute is further modified by requiring notification of victims and allowing for expungement of nonjudicial closures.

Mr. Ron Gordon, Commission on Criminal and Juvenile Justice, briefed the committee on the draft legislation and answered questions of the committee. He recommended an amendment to the bill.

MOTION: Rep. Daniels moved on line 143, after the word "adjudication" to insert ", and the nature and seriousness of the conduct." and delete lines 144 through 147. Then on line 139, delete the ":" and on line 140, delete "(i)." The motion passed unanimously with Sen. Peterson, Sen. Spencer, Rep. Bennion, and Rep. Tyler absent for the vote.

MOTION: Rep. Arent moved to pass draft legislation "Expungement of Juvenile Records," as amended, out favorably as a committee bill. The motion passed unanimously with Sen. Peterson, Sen. Spencer, Rep. Bennion, and Rep. Tyler absent for the vote.

11. Sunset Reviews

Mr. Howe explained that these Sunsets Acts are to be reviewed by the committee:

- **78-3-23** Administrator of the courts – Appointment – Qualifications – Salary
- **78-31b** Alternative Dispute Resolution

MOTION: Sen. Waddoups moved to remove the sunset dates, draft legislation for each of the Sunset Acts and accept them as committee bills.

SUBSTITUTE MOTION: Rep. Ferry moved to extend both Sunset Reviews "78-3-23 and 78-31b" for two years. The motion failed with Rep. Bryson, Rep. Daniels, Rep. Ferrin, and Rep. Thompson voting in favor of the motion. Sen. Peterson, Sen. Spencer, Rep. Arent, Rep. Bennion, and Rep. Tyler were absent for the vote.

The committee returned to Sen. Waddoup's original motion. The motion before the committee was to remove the sunset dates, draft legislation for each of the Sunset Acts and accept them as committee bills. The motion passed with Rep. Ferrin, Rep. Ferry, Rep. Hutchings, and Rep. Thompson voting in opposition. Sen. Peterson, Sen. Spencer, Rep. Arent, Rep. Bennion, and Rep. Tyler were absent for the vote.

12. Motor Vehicle Insurance Coverage – Arbitration Requirements

This agenda item was not discussed.

13. Other Business

14. Adjournment

MOTION: Rep. Bryson moved to adjourn the meeting. The motion passed unanimously with Sen. Peterson, Sen. Spencer, Rep. Arent, Rep. Bennion, and Rep. Tyler absent for the vote. Chair Way adjourned the meeting at 5:53 p.m.